

## Part 2. Felony Sentencing.

### **§ 15A-1340.13. Procedure and incidents of sentence of imprisonment for felonies.**

(a) Application to Felonies Only. – This Part applies to sentences imposed for felony convictions.

(b) Procedure Generally; Requirements of Judgment; Kinds of Sentences. – Before imposing a sentence, the court shall determine the prior record level for the offender pursuant to G.S. 15A-1340.14. The sentence shall contain a sentence disposition specified for the class of offense and prior record level, and its minimum term of imprisonment shall be within the range specified for the class of offense and prior record level, unless applicable statutes require or authorize another minimum sentence of imprisonment. The kinds of sentence dispositions are active punishment, intermediate punishment, and community punishment.

(c) Minimum and Maximum Term. – The judgment of the court shall contain a minimum term of imprisonment that is consistent with the class of offense for which the sentence is being imposed and with the prior record level for the offender. The maximum term of imprisonment applicable to each minimum term of imprisonment is, unless otherwise provided, as specified in G.S. 15A-1340.17. The maximum term shall be specified in the judgment of the court.

(d) Service of Minimum Required; Earned Time Authorization. – An offender sentenced to an active punishment shall serve the minimum term imposed, except as provided in G.S. 15A-1340.18. The maximum term may be reduced to, but not below, the minimum term by earned time credits awarded to an offender by the Division of Adult Correction and Juvenile Justice of the Department of Public Safety or the custodian of the local confinement facility, pursuant to rules adopted in accordance with law.

(e) Deviation from Sentence Ranges for Aggravation and Mitigation; No Sentence Dispositional Deviation Allowed. – The court may deviate from the presumptive range of minimum sentences of imprisonment specified for a class of offense and prior record level if it finds, pursuant to G.S. 15A-1340.16, that aggravating or mitigating circumstances support such a deviation. The amount of the deviation is in the court's discretion, subject to the limits specified in the class of offense and prior record level for mitigated and aggravated punishment. Deviations for aggravated or mitigated punishment are allowed only in the ranges of minimum and maximum sentences of imprisonment, and not in the sentence dispositions specified for the class of offense and prior record level, unless a statute specifically authorizes a sentence dispositional deviation.

(f) Suspension of Sentence. – Unless otherwise provided, the court shall not suspend the sentence of imprisonment if the class of offense and prior record level do not permit community or intermediate punishment as a sentence disposition. The court shall suspend the sentence of imprisonment if the class of offense and prior record level require community or intermediate punishment as a sentence disposition. The court may suspend the sentence of imprisonment if the class of offense and prior record level authorize, but do not require, active punishment as a sentence disposition.

(g) Dispositional Deviation for Extraordinary Mitigation. – Except as provided in subsection (h) of this section, the court may impose an intermediate punishment for a class of offense and prior record level that requires the imposition of an active punishment if it finds in writing all of the following:

- (1) That extraordinary mitigating factors of a kind significantly greater than in the normal case are present.
- (2) Those factors substantially outweigh any factors in aggravation.
- (3) It would be a manifest injustice to impose an active punishment in the case.

The court shall consider evidence of extraordinary mitigating factors, but the decision to find any such factors, or to impose an intermediate punishment is in the discretion of the court. The extraordinary mitigating factors which the court finds shall be specified in its judgment.

(h) Exceptions When Extraordinary Mitigation Shall Not Be Used. – The court shall not impose an intermediate sanction pursuant to subsection (g) of this section if:

- (1) The offense is a Class A or Class B1 felony;
- (2) The offense is a drug trafficking offense under G.S. 90-95(h) or a drug trafficking conspiracy offense under G.S. 90-95(i); or
- (3) The defendant has five or more points as determined by G.S. 15A-1340.14. (1993, c. 538, s. 1; 1994, Ex. Sess., c. 14, ss. 18, 18.1, 19; c. 22, s. 9; c. 24, s. 14(b); 1995, c. 375, s. 1; 2011-145, s. 19.1(h); 2011-192, s. 5(d); 2017-186, s. 2(ggg).)